

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 17-819V
(Not to be published)

CHERLANDA SHEPPARD,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Special Master Corcoran

Filed: September 27, 2019

Decision by Stipulation; Damages;
Conceded; Guillain-Barré Syndrome;
Tdap Vaccine.

Gary Alan Krochmal, Law Offices of Gary A. Krochmal, PLLC, MI, for Petitioner.

Amy Paula Kokot, U.S. Dep't of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On June 19, 2017, Cherlanda Sheppard filed a petition seeking compensation under the National Vaccine Injury Compensation Program.² (ECF No. 1). Petitioner alleged that she developed Guillain-Barré syndrome (“GBS”) as a result of the tetanus-diphtheria-acellular-pertussis (“Tdap”) vaccine she received on May 23, 2016. *Id.* at 5.

¹ Although not formally designated for publication, this Decision will be posted on the United States Court of Federal Claims website in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 (2012). **This means the Decision will be available to anyone with access to the internet.** As provided by 42 U.S.C. § 300aa-12(d)(4)(B), however, the parties may object to the published Decision’s inclusion of certain kinds of confidential information. Specifically, under Vaccine Rule 18(b), each party has fourteen days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, the whole Decision will be available to the public in its current form. *Id.*

² The Vaccine Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3758, codified as amended at 42 U.S.C. §§ 300aa-10 through 34 (2012) (“Vaccine Act” or “the Act”). Individual section references hereafter will be to § 300aa of the Act (but will omit that statutory prefix).

Respondent denied Petitioner's GBS was caused by the receipt of the Tdap vaccine. (ECF No. 15). Petitioner submitted two expert reports and Respondent submitted an expert report. (ECF Nos. 22, 24, 25). Then, I held a status conference with the parties on February 27, 2019, and directed Respondent to indicate whether he was amenable to settlement. Respondent indicated that settlement was possible (ECF No. 29), and for the next several months the parties engaged in settlement negotiations. On September 26, 2019, the parties filed a stipulation maintaining their positions but agreeing that the issues before them can be settled, and that a decision should be entered awarding Petitioner compensation. (ECF No. 35).

I have reviewed the file, and based upon that review, I conclude that the parties' stipulation (as attached hereto) is reasonable. I therefore adopt it as my decision in awarding damages on the terms set forth therein.

The stipulation awards:

- A lump sum payment of \$150,000.00, in the form of a check payable to Petitioner, Cherlanda Sheppard. This amount represents compensation for all elements of compensation under Vaccine Act Section 15(a) to which Petitioner is entitled.
- A lump sum of \$1,8740.41. which amount represents reimbursement of a State of Michigan Medicaid lien, in the form of a check payable jointly to Petitioner and:

Meridian Health Plan
c/o Discovery Health Partners
Two Pierce Place
Suite 1900
Itasca, IL 60143
Attn: Ashonda Walker, Recovery Analyst
awalker@discoveryhealthpartners.com
Case No. 2948070
TIN: 26-30000153

Petitioner has agreed to endorse the reimbursement check to Discovery Health Partners. (ECF No. 35).

I approve a Vaccine Program award in the requested amount set forth above to be made to Petitioner. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the Court is directed to enter judgment herewith.³

IT IS SO ORDERED.

/s/ Brian H. Corcoran
Brian H. Corcoran
Special Master

³ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by each filing (either jointly or separately) a notice renouncing their right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

CHERLANDA SHEPPARD,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 17-819V (ECF)

Special Master Corcoran

STIPULATION

The parties hereby stipulate to the following matters:

1. Cherlanda Sheppard, petitioner, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to -34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to petitioner's receipt of the tetanus-diphtheria-acellular pertussis ("Tdap") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Petitioner received a Tdap vaccination on or about May 23, 2016.
3. The vaccine was administered within the United States.
4. Petitioner alleges that the Tdap vaccine caused her to develop Guillain-Barré Syndrome ("GBS"). Petitioner further alleges that she experienced the residual effects of this injury for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her condition.
6. Respondent denies that the Tdap vaccine administered on or about May 23, 2016, is the cause of petitioner's alleged GBS and/or any other injury or her current condition.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- a. A lump sum of \$150,000.00 in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).
- b. A lump sum of \$1,870.41, which amount represents reimbursement of a State of Michigan Medicaid lien, in the form of a check payable jointly to petitioner and:

Meridian Health Plan
c/o Discovery Health Partners
Two Pierce Place
Suite 1900
Itasca, IL 60143
Attn: Ashonda Walker, Recovery Analyst
awalker@discoveryhealthpartners.com
Case No. 2948070
TIN: 26-3000153

Petitioner agrees to endorse this check to Discovery Health Partners.

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable

under 42 U.S.C. § 300aa-15(g), including State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or entities that provide health services on a pre-paid basis.

11. Payment made pursuant to paragraph 8 of this Stipulation, and any amount awarded pursuant to paragraph 9 of this Stipulation, will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity, and on behalf of her heirs, executors, administrators, successors and/or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the Tdap vaccination administered on or about May 23, 2016, as alleged by petitioner in a petition for vaccine compensation filed on or about June 19, 2017, in the United States Court of Federal Claims as petition No. 17-819V.

14. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

15. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

16. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the Tdap vaccine caused petitioner's alleged GBS, or any other injury or her current condition.

18. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

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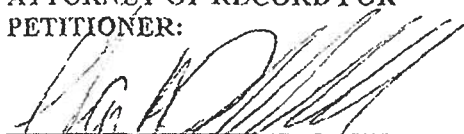
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Respectfully submitted,

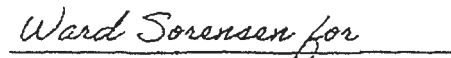
PETITIONER:


CHERLANDA SHEPPARD


ATTORNEY OF RECORD FOR
PETITIONER:


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Dated: 9/26/2019